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C O N F I D E N T I A L LA PAZ 003258

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TAGS: [PHUM](#) [PGOV](#) [PREL](#) [BL](#)
SUBJECT: BOLIVIA'S JUSTICE SYSTEM ON LIFE SUPPORT

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 (b) and (d).

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Summary
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¶1. (C) Constitutional Tribunal Magistrate Dr. Walter Alfredo Rana Arana submitted his resignation leaving the court without a quorum and Bolivia without a judicial body to rule on constitutional matters including the extra-legal

maneuvers President Morales' ruling Movement Toward Socialism (MAS) has executed over the past three weeks in the Constituent Assembly, Congress and elsewhere. Although publicly Rana states he resigned for health reasons, privately we hear it is because of MAS intimidation and threats against him and his family. The MAS' campaign against the judiciary has resulted in a string of resignations that has debilitated the Bolivian courts. Morales can now control the Tribunal with interim appointments or simply leave the Tribunal without the necessary quorum, both options effectively mean that Evo has virtually unchecked powers. The death of the Constitution Tribunal and Evo's ability to control the national Electoral Court (CNE) means that there are no institutional barriers to any potential extra-legal actions his government and MAS party commit in 2008. End Comment.

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Resignation Leaves Bolivia Without Justice
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¶2. (SBU) Citing health reasons, Dr. Walter Alfredo Rana Arana delivered his resignation to Vice President (and Congressional President) Alvaro Garcia Linera on December 13, leaving only two magistrates left on the court. The court, normally comprised of five "titular" (main) magistrates and five alternates requires at least three magistrates to form a quorum. Without a quorum the court is effectively dead. The Tribunal is the Bolivian judicial body that is responsible for ruling on matters in which the executive, legislative and derived bodies (such as the Constituent Assembly) violate the constitution and Bolivian laws. The Tribunal can overturn

presidential decrees as unconstitutional, and is responsible for ruling on violations of individual human rights.

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Threats, not Health, Forced the Resignation
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¶3. (C) Emboff spoke to Silvia Salame, one of the remaining two Constitutional Tribunal Magistrates, on December 13. She explained that she had not spoken with Rana and only learned of his resignation via letter. She had been hoping to talk to Dr. Rana to get him to change his mind, but failed. In a December 5 meeting Salame warned emboff that her two colleagues were contemplating resignation because of the threats they were receiving on a daily basis, but that she hoped (and was urging) that they hold on until January when President Morales is expected to nominate interim magistrates. Dr. Rana had taken several weeks of medical leave in recent months. Although in a statement following the delivery of his resignation to the Vice President, Rana stated he had not received any pressure, other statements indicate other motives. Rana stated, "I need to rest, I need peace in my life, peace in my house, I have family problems and unfortunately I cannot continue this way."

¶4. (C) Salame insists that Rana resignation was due to the MAS' intimidation, stating the government has constantly harassed, threatened, and invaded the privacy of the three magistrates and their families. Emboff met Rana in late July and he indicated that threats and MAS-sponsored impeachment proceedings were taking its toll on him and his fellow magistrates. Emboff had been in contact with Rana and his colleague magistrate Dr. Artemio Arias via phone following the July meeting; however, by September neither Rana's nor Arias' cell phones worked. Salame explained that they had changed numbers and would only give their new numbers out to close friends and family due to government phone taps.

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MAS Campaign Succeeds in Killing Court
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¶5. (C) Shortly after taking office in January 2006, Evo Morales and those in his administration began verbally attacking the judiciary. In March 2006 President Morales and Vice President Garcia Linera went on the offensive against the court, claiming it ruled in favor of Lloyd Airlines after receiving bribes. In April 2006, he argued that "certain sacred cows of judiciary" do not wish to "accompany (go along with) his government's policies of change." In October 2006, he called the Supreme court a "relic of the colonial state." At opening of the 2007 judicial year, Morales summarized his criticisms of the courts. First he denounced the entire system as corrupt and "smelling of dollars", then called the supreme court justices that he did not appoint "relics of past governments." On June 5, in response to the government's "defamation" campaign against the courts, 2,900 judicial branch employees staged their first ever strike.

¶6. (C) While the rhetorical attacks continued, the President and his supporters began resorting other forms of intimidation earlier this year. On April 27 to pressure the court into respecting a presidential mining decree, well over a thousand government-paid miners marched on Sucre and attacked the Constitutional Tribunal with dynamite, leaving the Tribunal's faade destroyed and police officer badly injured.

¶7. (C) In May President Morales presented to Congress impeachment charges of judicial malpractice against four of the five remaining Constitutional Tribunal magistrates. On May 25 visit to the Supreme Court our Ambassador gave a press conference purposefully avoided speaking directly to the impeachment case but stressed that an independent judiciary is critical to democracy. The Bolivian government responded with a barrage of criticism, arguing the Ambassador was interfering Bolivia's domestic affairs and defending a

"corrupt institution." In fact, Foreign Minister David Choquehuanca reiterated the argument December 13 following Rana's resignation. The MAS dominated lower house of Congress approved Morales' charges thus suspending the four magistrates, but the opposition-controlled Senate eventually acquitted the magistrates. Perhaps frustrated that the initial impeachment proceedings failed, the lower house took up a slew of new impeachment charges against the Constitutional Tribunal Magistrates. The Constitutional Tribunal was not the only target of MAS impeachments, on December 5, it passed impeachment charges against Supreme Court justice Maria Rosario Canedo thus suspending her from the court, until the Senate rules on the case.

¶8. (C) Rana's departure follows a series of Constitutional Tribunal and other court resignations as result of the MAS' campaign against the courts. Former Tribunal President Wilman Duran resigned in early 2006 after the President Morales cut judicial salaries in half to \$1,400 USD. The President of the Supreme Court Eduardo Rodriguez (the former interim Bolivian President) and his colleague Justice Armando Villafuerte also resigned over the salary cuts. On October 26, Tribunal President Elizabeth Iniguez and Magistrate Martha Rojas resigned declaring that government's "permanent aggression" against the court made it impossible to continue their "normal activities." The October resignations left the Constitutional Tribunal with the minimum three member quorum until Rana's resignation December 13.

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Electoral Court in the Crosshairs
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¶9. The President of the national Electoral Court (CNE) -- the institution designed to ensure a "fair and just" elections -- Oscar Hassenteuffel resigned his post for alleged "personal reasons" on April 1, 2006 leaving the CNE with the bare minimum of three justices. The CNE will face even greater problems come January 2008 when its president must step down and Morales makes what is expected to be at least three interim appointments. The CNE is normally comprised of five justices, four appointed by Congress, one by the President. The five "titular" (main) justices are backed-up by five alternate justices. To ensure that both majority and minority interests are represented the electoral code stipulates Congressional appointments require a two-thirds majority of the membership of both houses of Congress. In the past this has ensured that Bolivian elections have been generally "free and fair."

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Comment
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¶10. (C) Bolivia no longer has a functioning Constitutional Tribunal, meaning there is effectively no check on the powers of the executive branch, and that "rule of law" is essentially dead. But, the Tribunal has been under siege for much longer. Magistrates estimate that the Tribunal has a backlog of some 1400 cases, most due to the fact that the magistrates have not been able to work much since the government levied impeachment charges against them in May. There are a host of potential cases against the MAS and the government the court could have heard) including cases on the legality on the MAS' handling of the Constituent Assembly process, the government's role in the November 23-25 violence in Sucre, and the MAS' locking-out of the opposition during a November 27 Congressional session.

¶11. (C) Rana's resignation gives the President control over the court. Morales has two options -- appoint interim magistrates or do nothing -- each leaves with him with virtually unchecked powers. Congress is responsible for judicial appointments, but the current constitution requires the approval of two-thirds of its members. The MAS and opposition will likely never agree on magistrates before the December-January Congressional recess. Furthermore, it is in the MAS' best interest to prevent any Congressional

appointments as President Morales can appoint interim magistrates as soon as Congress goes on recess. Morales' interim appointments would control the new Tribunal as the remaining two magistrates have already confided with emboffs that they would resign immediately following the appointments.

¶12. (C) Morales' second option -- to do nothing -- is perhaps an even better solution. If Congress fails to appoint new magistrates the Tribunal remains dead. A dead Tribunal cannot rule against Evo, so he has no need to appoint interim justices. The Constitutional Tribunal and the Senate were the two institutions that the Evo did not dominate. Morales has effectively killed the Tribunal, and will use its death as a means to discredit the Senate. He will almost certainly claim that he is truly dedicated to democracy and the separation of powers but that the opposition controlled Senate is the institution responsible for preventing new Tribunal appointments. Evo's MAS base will take him at his word, and the international community, generally ignorant to the facts, will likely believe him too. Morales has time again stated that he is prepared to govern by decree disregarding the Senate. Without a Constitutional Tribunal he now has the green light to do so.

¶13. (C) Currently the CNE has only three justices and no alternates. The President of the court Salvado Romero Ballivian must step down in January, leaving the court without the necessary three-person quorum. With Congress approaching its normal December recess, like with the Constitutional Tribunal, the MAS and opposition do not appear poised to agree on new CNE appointments. President Morales, in the case of the CNE, will likely exercise his constitutional authority to make interim appointments. Therefore instead of appointing just one justice as is the normal authority for the president, Evo will be able to fill the CNE's three vacancies thus allowing him control the majority of the court and therefore give him undue influence over the electoral process. Morales will be able to stack the electoral deck in his favor for the three critical referenda planned for 2008.

¶13. (C) Without impartial international observers (Organization of American States and/or United Nations) the opposition fears that the MAS-dominated CNE will organize the 2008 referenda in such a way that favors the MAS; the opposition's fears to do not seem unfounded. One view is that the MAS is planning to use the first constitutional (the landholding) referenda as a dry-run for how they will manipulate the electoral process. A corruption of the electoral system could further divide the MAS and opposition. Some analysts argue that elections and referenda in Bolivia have historically served as political de-pressurization valves that prevent conflicts from escalating. If the MAS skews the electoral system so much that the opposition-led departments see the 2008 referenda as totally fraudulent, some radicals in the opposition may view violent protest as the only solution. End Comment.
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